

**Implementation Questions & Answers**  
**2003 – Clean Indoor Air Act (CIAA)**  
Article 13-E - (§1399-n – §1399-x)

[Erie County Waiver Cover](#)

[Erie County Tobacco Waiver Application](#)

1. Who enforces the CIAA?
  - a. Enforcement of the law is the responsibility of the local enforcement officer. The Erie County Department of Health is the local enforcement officer for Erie County. The local enforcement officer will respond to complaints received pertaining to the failure to comply with the CIAA;
  - b. Compliance with the new law is the responsibility of the owner, operator manager, or person in charge as the law requires the owner, operator, manager or person in charge to make a good faith effort to ensure employees and customers comply with the law.
2. What are the criteria for taking enforcement?
  - a. The enforcement officer documents that the CIAA is not being implemented by the owner, operator, manager, or person in charge of a facility, and initiates the actions necessary to assess a penalty.
3. Who determines the amounts of the fines?
  - a. The enforcement officer for the county health department can assess a penalty of up to \$1,000 for each violation. In areas where the State Health Department is the enforcement officer, a fine of up to \$2000 can be assessed; **however, in Erie County, the County Department of Health is the enforcement agency for the entire county.** In many cases, fines start at a lower amount and are increased if repetitive violations occur.
4. Where can violations be reported? What are the procedures for filing a complaint and how is a complaint investigated?
  - a. Violations should be reported to the Erie County Department of Health District Offices or the Main Office at 95 Franklin Street, Room 930, Buffalo, NY 14202. Main Office - 858-6089
  - b. For initial complaints about a given facility's lack of compliance with the CIAA, the investigation may include the enforcement officer sending a letter to the establishment requesting information on how the establishment or work site is implementing the CIAA. In an effort to curtail further non-compliance, the letter will also inform the establishment that a complaint has been made and reiterate to the establishment the repercussions of non-compliance. Depending on the severity or number of complaints, a site visit may take place to assess the validity of the complaint and compliance efforts.
  - c. Should it be found that a violation has occurred, a fine will be levied against the establishment.
5. Can you smoke outside of a bar?

- a. Yes. The outside restriction applies only to food service establishments. A bar is defined as a facility that sells alcoholic beverages for on site consumption and has **no food preparation**.
6. Does the local enforcement officer have to witness inappropriate smoking to take enforcement action?
- a. No. However, they must get credible evidence that a violation of the CIAA act has occurred.
7. Will the inspectors conduct surveys of compliance during routine inspections?
- a. Yes, if smoking or evidence of smoking is noted the inspector will address the subject.
8. Are cigarette vending machines in bars and restaurants illegal since there is no smoking?
- a. No, cigarettes may be purchased from a vending machine but cannot be smoked in a bar or a restaurant.
9. If an operator has a license to sell cigars, does that qualify the establishment as a cigar bar?
- a. No, a cigar bar would have to have been in existence prior to December 31, 2002 and generated ten percent or more of its total annual gross income from on-site sale of tobacco products.
10. Is smoking allowed in college dormitory rooms?
- a. Yes, dormitory rooms are considered private residences.
11. Is smoking allowed in company vehicles if all riders agree?
- a. No, it is specifically identified as a place of employment where smoking is not permitted.
12. Can someone smoke in his or her private office in a commercial work establishment?
- a. No.
13. What constitutes a ceiling enclosure in an outdoor eating area?
- a. A continuous structure (attached to building and enclosed) that protects an outside seating area from the elements is a ceiling enclosure. An umbrella would not constitute a ceiling enclosure.
14. What organizations are exempt from the regulations?
- a. Membership associations where all the duties with respect to the operation are performed by members of such membership and who do not receive compensation of any kind from the membership association or any other entity for performing this duty. Compensation includes free membership, salary, and/or tips.
15. Will waivers be granted for financial hardship?

The State legislature has provided waiver guidelines for those counties that do not have a health department. Erie County does have a health department and has established its own waiver criteria.

Erie County Department of Health criteria for financial hardship waivers are now available. A request for an application for waiver can be obtained by sending a written request outlining your reasons for application for waiver to:

Attention: Request for Financial Hardship Waiver  
95 Franklin Street, Room 938  
Buffalo, NY 14202

Or you can download the application cover and application by clicking on the following links:

[Erie County Waiver Cover](#)

[Erie County Tobacco Waiver Application](#)

16. Will existing waivers be valid?
  - a. Existing waivers will no longer be valid.
17. Will BINGO games in churches and civic organizations be exempt from the CIAA?
  - a. No, as they are specifically listed as a place where smoking is not allowed 1399(o)(18).
18. Is smoking allowed at banquets and catered private parties?
  - a. No, anywhere where people are compensated for working at an event there will be no smoking allowed in doors.
19. What action should be taken if a patron refuses to stop smoking?
  - a. The owner, operator, manager or person in charge should make a reasonable effort to obtain compliance. If the person should become disorderly or unruly, the local police should be contacted immediately.
20. Who is responsible for the ensuring compliance with the CIAA for cleaning crews who are outside employees of an agency or organization?
  - a. The employer of the cleaning crew is ultimately responsible for the behavior of their employees. However, establishments who hire cleaning crews also have an obligation to prevent smoking in prohibited areas.
21. Can you smoke in a bar that is owner operated with no employees?
  - a. No, because bars are specifically identified as an area where smoking is not to occur 1399(o)(2).
22. Are there restrictions as to where smoking can occur outdoors at a workplace?
  - a. There have been no specific guidelines provided on where outdoor smoking may occur, except for school property and restaurants. (There is no smoking on school property at all, and smoking in food service establishments must not occur within a fixed structure or within three feet of a fixed structure. Food service establishments may opt to allow smoking at tables in an outside area that are either under umbrellas/ or out in the open as long as the tables are three feet away from a non-smoking outside area and are clearly designated as smoking areas via signage and postings).

23. Are there any other laws that regulate smoking?
- a. Yes, some aspects of Erie County's Clean Air Act are more stringent than the state law. These laws will remain in effect, as the new state law does not supersede existing county laws that are more stringent than the state's CIAA.
  - b. The more stringent clauses of the county law prohibit smoking in arenas and stadiums with seating capacities of 5,000 or more. Smoking is also prohibited in the common areas of apartments and condominiums.

For more information click here: [1399 definitions and text](#)

Or go to:

[New York State Laws](#)

Then click on Laws of New York, then scroll down and click on PBH, and then scroll to and click on Article 13-E - (§1399-n – §1399-x) REGULATION OF SMOKING IN CERTAIN PUBLIC AREAS